CUSTOMER NO.: 38107
EXPEDITED PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of A. MARTIN	)	Examiner: T. McEVOY
Serial No.: 10/542,975	)	Art Unit: 3731
Filed: July 21, 2005	)	Confirmation: 1970
For: **MAGNETIC RESONANCE COMPATIBLE STENT**	)	
Date of Last Office Action: March 9, 2010	)	
Attorney Docket No.: PHUS030017US2/ PKRZ 201366US01	)	Cleveland, OH 44114 May 3, 2010

CONDITIONAL PETITION FOR WITHDRAWAL OF PREMATURE FINALITY

Mail Stop: AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

If the applicant's request in the Amendment C (After Final) filed concurrently herewith to withdraw the premature Finality of the March 9, 2010 Office Action is not granted by the Examiner, then the application hereby Petitions for the withdrawal of the Finality of the March 9, 2010 Office Action and entry of the accompanying amendment.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this **CONDITIONAL PETITION FOR WITHDRAWAL OF PREMATURE FINALITY** and accompanying documents in connection with U.S. Serial No. 10/542,975 are being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

May 7 2010
Date

Patricia A Heim
Patricia A. Heim

By way of background, the applicant filed an Appeal Brief on November 19, 2009 appealing from the Final Rejection of June 25, 2009. In preparing the Appeal Brief, the applicant noted wording inconsistencies, in which the same structure was referenced by two different, but substantially synonymous terms. Accordingly, the Appeal Brief was accompanied by an Amendment correcting these potential antecedent basis issues.

The Examiner responded to the Appeal Brief by issuing an Office Action on March 9, 2010 withdrawing all previous grounds of rejection and issuing three new grounds of rejection. The Examiner made the Office Action of March 9, 2010 Final.

It is submitted that fairness dictates that the applicant should have an opportunity to respond to the new grounds of rejection. Moreover, denying the applicant the right to respond to the new ground of rejection may result in the application going to the Board of Appeals before the record has been fully developed.

Moreover, it is submitted that the Finality of the March 9, 2009 Office Action is premature because the new grounds of rejection was not necessitated by the Appeal Brief or the accompanying Amendment D.

The Examiner's first new ground of rejection under 35 U.S.C. § 112, second paragraph, asserts that wording in claim 13 (which had been present in claim 13 since before the Final Rejection) is now deemed to be indefinite. Accordingly, it is submitted that this new ground of rejection was not necessitated by the Appeal Brief or the accompanying Amendment and fairness dictates that the applicant should have the opportunity to address it.

In the Examiner's second new ground of rejection, the Examiner now rejects claims 16, 18, and 19 under a different combination of previously applied references. It is submitted that neither the Appeal Brief nor the accompanying Amendment necessitated this new ground of rejection. The Amendment accompanying the Appeal Brief made two minor wording corrections. It changed "insulator nodes" to "non-conductive connector nodes" for consistency with the terminology used previously in claim 13. In claim 16, "ring" was changed to "loop" for consistency with the terminology used in prior line 6 of claim 16 and for

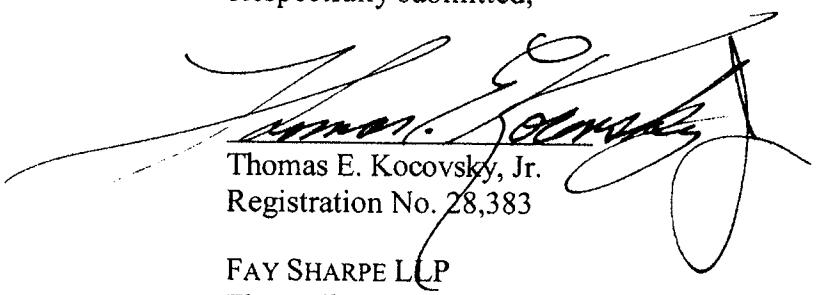
consistency with the language used in dependent claims 19 and 20. It is submitted that this correction of a 35 U.S.C. § 112, second paragraph, nature did not alter the scope of the claims and hence, did not necessitate the new ground of rejection. In the Final Rejection, the Examiner has not shown how or that this language change necessitated the new ground of rejection.

Third, the Examiner issued a new ground of rejection against cancelled claim 12. The new ground of rejection against claim 12 would also be a new ground of rejection against claim 13 if it had been made against claim 13. (Claim 13 was previously rejected under 35 U.S.C. § 102 as being anticipated by Pacetti. The new ground of rejection is based on Lau as modified by Pacetti.) Because the Amendment accompanying the Appeal Brief corrected only minor wording inconsistencies and did not change the scope of the claims, it is submitted that the new ground of rejection against claim 12 was not necessitated by either the Appeal Brief or by the Amendment accompanying the Appeal Brief.

The applicant is not petitioning the withdrawal of claim 21 on the alleged grounds of Constructive Election at the present time. Rather, as required by the Rules, the applicant is requesting reconsideration in the accompanying Amendment. If the Constructive Election issue is not satisfactorily resolved with the Examiner, the applicant expressly reserves the right to petition the Examiner's withdrawal of claim 21 in a future, timely-filed Petition.

Because fairness to the applicant dictates and because the Finality of the March 9, 2010 Office Action is premature, it is requested that the Finality of the March 9, 2010 Office Action be withdrawn.

Respectfully submitted,



Thomas E. Kocovsky, Jr.
Registration No. 28,383

FAY SHARPE LLP
The Halle Building, 5th Floor
1228 Euclid Avenue
Cleveland, OH 44115-1843
Telephone: 216.363.9000 (main)
Telephone: 216.363.9122 (direct)
Facsimile: 216.363.9001
E-Mail: tkocovsky@faysharpe.com